

Case No. 24-12311-J

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,
Appellant,

v.

DONALD J. TRUMP, WALTINE NAUTA, and CARLOS OLIVEIRA
Defendants-Appellees

On appeal from the United States District Court
for the Southern District of Florida
Case No. 23-80101-CR-CANNON

**MOTION FOR LEAVE TO FILE BRIEF OF AMICI
CURIAE CITIZENS FOR RESPONSIBILITY AND
ETHICS IN WASHINGTON, NANCY GERTNER,
STEPHEN GILLERS, AND JAMES J. SAMPLE,
SUPPORTING APPELLANT UNITED STATES OF
AMERICA AND REVERSAL OF JUDGMENT**

STEVEN A. HIRSCH
KEKER, VAN NEST & PETERS LLP
633 Battery Street
San Francisco, CA 94111-1809
Telephone: 415 391 5400
Facsimile: 415 397 7188

*Attorneys for Amici Curiae
Citizens for Responsibility and Ethics in Washington, Nancy Gertner,
Stephen Gillers, and James J. Sample*

CORPORATE DISCLOSURE STATEMENT

Citizens for Responsibility and Ethics in Washington (“CREW”) submits this corporate disclosure statement pursuant to Federal Rule of Appellate Procedure 26.1 and 29 and 11th Circuit Rules 26.1-2 and 29-1.

CREW has no parent company or other identifiable related legal entities, and no trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of the particular case or appeal, including subsidiaries, conglomerates, affiliates, parent corporations, or any publicly held corporation, has a ten percent or greater ownership interest in CREW.

CERTIFICATE OF INTERESTED PERSONS

Pursuant to Fed. R. App. P. 26.1 and 11th Circuit Rules 26.1-1 and 26.1-2, and based on the Certificate of Interested Persons set forth on pages C-1 to C-7 of the Brief of the United States filed on August 26, 2024 [doc. 18], the undersigned hereby certifies that the following is a list of persons and entities who have an interest in the outcome of this case:

1. Advance Publications, Inc.
2. Alonso, Cristina

3. America First Legal Foundation
4. American Broadcasting Companies, Inc., d/b/a ABC News
5. Ayer, Donald
6. Blackman, Joshua
7. Blanche, Todd
8. Bloomberg, L.P.
9. Bove, Emil
10. Bowman, Chad
11. Bratt, Jay
12. Cable News Network, Inc.
13. Calabresi, Steven
14. Caldera, Louis
15. Cannon, Hon. Aileen
16. Cate, Matthew
17. CBS Broadcasting, Inc. o/b/o CBS News
18. Citizens United
19. Citizens United Foundation
20. CMG Media Corporation
21. Coleman, Tom

22. Conway, George
23. Cooney, J.P.
24. Cox Enterprises, Inc. (COX) d/b/a The Atlanta Journal-Constitution
25. Dadan, Sasha
26. De Oliveira, Carlos
27. Dow Jones & Company, Inc., publisher of The Wall Street Journal
28. Dreeben, Michael
29. Edelstein, Julie
30. Fields, Lazaro
31. Fitzgerald, Patrick
32. Fort Myers Broadcasting Company
33. Gerson, Stuart
34. Goodman, Hon. Jonathan
35. Gray Media Group, Inc. (GTN)
36. Guardian News & Media Limited
37. Harbach, David
38. Hulser, Raymond

39. Insider, Inc.
40. Irving, John
41. Kise, Christopher
42. Lacovara, Philip Allen
43. Landmark Legal Foundation
44. Lawson, Gary
45. Los Angeles Times Communications LLC, publisher of The Los Angeles Times
46. Maynard, Hon. Shaniek Mills
47. McKay, John
48. McNamara, Anne
49. Meese, Edwin
50. Mishkin, Maxwell
51. Mukasey, Hon. Michael B.
52. Murrell, Larry Donald
53. National Cable Satellite Corporation d/b/a C-SPAN
54. National Public Radio, Inc.
55. Nauta, Waltine
56. NBCUniversal Media, LLC d/b/a NBC News, a subsidiary of

Comcast Corporation (CMCSA)

57. Orlando Sentinel Media Group, publisher of the Orlando
Sentinel

58. Pearce, James

59. Pellettieri, John

60. POLITICO LLC

61. Potter, Trevor

62. Radio Television Digital News Association

63. Raul, Alan Charles

64. Reinhart, Hon. Bruce E.

65. Reuters News & Media, Inc.

66. Russell, Lauren

67. Salario, Samuel

68. Sasso, Michael

69. Schaerr, Gene

70. Seligman, Matthew

71. Smith, Abbe

72. Smith, Fern

73. Smith, Jack

74. State Democracy Defenders Action
75. Sun-Sentinel Company, LLC, publisher of the South Florida Sun Sentinel
76. TEGNA, Inc. (TGNA)
77. Telemundo Network Group, LLC d/b/a Noticias Telemundo
78. Thakur, Michael
79. The Associated Press
80. The E.W. Scripps Company (SSP)
81. The McClatchy Company, LLC (MNI) d/b/a the Miami Herald
82. The New York Times Company (NYT)
83. The Palm Beach Post and USA TODAY, publications operated by subsidiaries of Gannett Co., Inc. (GCI)
84. Thompson, Larry
85. Tillman, Seth Barrett
86. Tobin, Charles
87. Torres, Hon. Edwin
88. Trent, Edward H.
89. Tribe, Laurence
90. Troye, Olivia

91. Trump, Donald J.
92. Trusty, James
93. Twardy, Stanley
94. United States of America
95. Univision Networks & Studios, Inc.
96. VanDevender, Cecil
97. Weiss, Stephen
98. Weld, William
99. Wharton, Kendra
100. Whitman, Christine Todd
101. Woodward, Stanley
102. WP Company LLC d/b/a The Washington Post
103. WPLG, Inc.

Respectfully submitted,

Dated: September 3, 2024

KEKER, VAN NEST & PETERS LLP

/s/ Steven A. Hirsch _____
STEVEN A. HIRSCH
Eleventh Circuit Bar No: 022032412
California Bar No.: 171825
Attorneys for Amici

Pursuant to Federal Rule of Appellate Procedure 29(a)(3) and Eleventh Circuit Rule 29-1, undersigned counsel seeks leave to file the accompanying proposed Brief of Amici Curiae Citizens for Responsibility and Ethics in Washington, Nancy Gertner, Stephen Gillers, and James J. Sample.

STATEMENT OF MOVANTS' INTERESTS IN THE CASE

Citizens for Responsibility and Ethics in Washington (“CREW”) is a nonpartisan, nonprofit organization that advocates for ethical, accountable, and open government. CREW has an interest in ensuring that our legal system enforces the ethics laws, rules, and canons applicable to federal judges so that our justice system treats all parties impartially. CREW has substantial expertise on matters related to judicial ethics, including testifying before the House and Senate at hearings on the topic, providing public analysis of judicial-ethics rules, and filing ethics complaints when federal judges violate those rules.

Nancy Gertner is a retired United States District Court Judge and is a Senior Lecturer at Harvard Law School, where she teaches subjects including criminal law, criminal procedure, and forensic science and sentencing.

Stephen Gillers is emeritus Professor of Law at the New York University School of Law. He has written widely on legal and judicial ethics in law reviews and in the legal and popular press.

James J. Sample is Professor of Civil Procedure, Constitutional Law, and Federal Courts at the Maurice A. Deane School of Law at Hofstra University; is the author or numerous articles and reports on judicial conduct and ethics; and is the co-author of *Judicial Conduct and Ethics* (6th ed.), the leading desk-reference treatise on that subject.

REASONS WHY THIS BRIEF IS DESIRABLE AND RELEVANT TO CASE DISPOSITION

The proposed amici brief urges the Court, if it reverses the judgment entered in this case, to reassign the matter to another district judge on remand, pursuant to the Court's supervisory authority under 28 U.S.C. § 2106.

If the Court reverses Judge Aileen M. Cannon's ruling in this matter, it will be the third time in under three years that it has had to do so in a seemingly straightforward case about a former president's unauthorized possession of government documents. The proposed amici

brief marshals law and facts demonstrating that this case satisfies all three *Torkington* factors for reassignment.¹

A. Judge Cannon would have difficulty putting her previous views and findings aside on remand. This Court has had to reverse Judge Cannon three times—each time because she reached out to adopt pro-defense practices and theories that directly contradicted longstanding law. Her rulings and other conduct create the appearance of an unshakeable conviction that subjecting a former president to ordinary criminal procedures represents an intolerable affront to his dignity.

Judge Cannon’s unprecedented ruling blocking the Government from using or viewing lawfully seized evidence, coupled with her demand that the parties draft jury instructions embodying Trump’s baseless Presidential Records Act defense, would suggest to a reasonable member of the public that her biases will infect and distort a trial on remand.

B. Reassignment is appropriate to preserve the appearance of justice. Even before she dismissed this case on novel

¹ See *United States v. Torkington*, 874 F.2d 1441, 1447 (11th Cir. 1989).

and insupportable grounds that ignored both statutory authority and Supreme Court precedent, Judge Cannon’s other extraordinary rulings and sluggish administration of the case had provoked well-founded concerns that she might be biased against the Government’s case and unable to manage that case impartially.

C. The gains realized from reassignment would outweigh any waste or duplication. The third *Torkington* factor is easily satisfied here because the case has yet to be tried—indeed, much of the district court’s pretrial work remains unfinished. And prior published opinions will help the next district judge master the essential facts and issues in the case.

The Special Counsel’s opening brief on appeal does not request reassignment of the case on remand. This may reflect an assessment of risks and benefits that does not apply to the amici. The proposed amici brief therefore will play a unique role in helping the Court craft an appropriate remand, if the Court reverses the judgment. The proposed amici brief is therefore both desirable and relevant to case disposition.

Dated: September 3, 2024

Respectfully submitted,

KEKER, VAN NEST & PETERS LLP

/s/ Steven A. Hirsch

STEVEN A. HIRSCH
California Bar No.: 171825

Attorneys for Amici Curiae

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 3, 2024, a true and correct copy of the foregoing document was electronically filed through CM/ECF. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system.

Dated: September 3, 2024

KEKER, VAN NEST & PETERS LLP

/s/ Steven A. Hirsch
STEVEN A. HIRSCH
California Bar No.: 171825

Attorneys for Amici Curiae